



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Peter Alvin Ward

17 IBIA 95 (03/27/1989)

Related Board case:

19 IBIA 196

Dismissed, *Quileute Indian Tribe v. Lujan*, No. CV-91-558-JCC,  
1992 WL 605423 (W.D. Wash. Aug. 28, 1992)  
Affirmed, 18 F.3d 1456 (9th Cir. Mar. 16, 1994)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF PETER ALVIN WARD : Order Docketing and Dismissing  
: Appeal as Premature  
:  
: Docket No. IBIA 89-18  
:  
: March 27, 1989

On March 27, 1989, the Board of Indian Appeals (Board) received a notice of appeal from the Quinault Indian Nation (appellant), through its attorneys, Richard Reich and Amy L. Crewdson. Appellant seeks review of a February 7, 1989, order issued in the Estate of Peter Alvin Ward (decedent) by Administrative Law Judge William E. Hammett, which held that certain trust or restricted interests owned by decedent escheated to the Quileute Indian Tribe pursuant to section 207 of the Indian Land Consolidation Act, 25 U.S.C. § 2206 (1982), rather than to appellant.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed without prejudice.

Appellant states its appeal is filed under 43 CFR 4.320, which allows a right of appeal to the Board from orders "regarding tribal interests in a deceased Indian's trust estate," without the normal requirement of first filing a petition for rehearing with the administrative law judge under 43 CFR 4.241. Appellant cites three prior cases in which the Board accepted appeals from it without its first filing a petition for rehearing.

Section 4.320 was amended, effective March 13, 1989. The section presently reads: "A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate." 54 FR 6487 (Feb. 10, 1989). The comments to the change state:

One commenter objected to the proposed change requiring an Indian tribe to first seek rehearing from the administrative law judge (Indian probate), rather than appealing directly to the Board, when the issue involved in an appeal is an escheat of an interest in Indian trust or restricted property to the tribe. The language of the section is being changed in order not to give Indian tribes different appeal rights than individuals, and to carry out the original intent of the regulation, which was obscured by inartful language. The comment is not accepted.

(54 FR 6483-84 (Feb. 10, 1989).) Thus, the regulation upon which appellant relies was changed in order to prevent exactly the situation raised here and in the previous cases appellant cites, in which an appeal is taken to the Board in a probate case without a petition for rehearing first being filed with the administrative law judge. Under the new regulation, appellant is required to file a petition for rehearing with Judge Hammett under 43 CFR 4.241 before filing an appeal with the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed without prejudice as premature.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge